IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1373 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT - Appellant(s)
Versus
KAMLESH MAVJIBHAI CHAUHAN - Opponent(s)

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Appearance :
MR KP RAWAL, ADDL. PUBLIC PROSECUTOR for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. The above referred Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure Code ('***Cr.P.C.***' for short) against the judgment and order delivered by the learned Additional Sessions Judge, 11th Fast Track Court, Rajkot on 15.02.2005 in Sessions Case (Atrocity) No. 28 of 2003 whereby the present respondent being accused of Sessions Case came to be acquitted by the Trial Court for the charges levelled against him under Sections 452, 345, 504 of the Indian Penal Code as well as under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('***Atrocities Act***' for short).

2. As per the prosecution case on 02.10.2001, the complainant Jayaben Babubhai filed complaint before the Rajkot 'B' Division Police Station; that on earlier day while she along with her husband and her children were present at her house at about 8.30 to 9.00 p.m., the accused came to her house, opened gate and trespassed. She was cleaning near open space

near the gate. The accused started giving abuses, accosted the complainant and encroached her house. Thereafter, the accused assaulted her and indecently put his hands on her breasts. Complainant – Jayaben started shouting. So her husband came out of the house and the accused thereafter ran away from the house. On account of shouting by Jayaben, neighborers gathered there and accused was caught red-handed. He was in drunken condition and thereafter, her husband called police who arrested the accused. A crime was registered vide Crime No.627 of 2001 and investigation was entrusted to P.S.I. - Panchbhai Bhagvanbhai. As a result of investigation, charge-sheet came to be filed in the Court of learned Chief Judicial Magistrate and was registered as Criminal case. The case was thereafter, committed to the Court of Sessions being Special Court. Learned Additional Sessions Judge framed charges against the accused *vide* Exh.7 on 10.06.2004. Accused pleaded not guilty and, therefore, he was put to trial. Prosecution examined as many as 14 witnesses and produced on record voluminous documentary evidence. Thereafter, circumstances appearing against the accused were put

to him by the Court under Section 313 of the Cr.P.C. and the defence of accused was of total denial. After hearing prosecution as well as defence, the learned trial Judge came to the above conclusion and hence, this appeal.

3. Learned Additional Public Prosecutor Mr.K.P.Rawal, for the State was heard in detail. We have called for Record and Proceedings from the learned trial Court. We have at this juncture gone through the Record and Proceedings carefully and reasons assigned by the learned trial Court for acquittal. On going through the evidence recorded by the learned trial Court, it appears that the complainant – Jayaben examined at Exh.16 stated to the extent that accused stepped in her house through gate, her husband was in bathroom and accused started giving abuses. The accused had accosted with her husband and she did not file complaint on that day, but at the instance of the neighbours, she filed complaint on the next day. In her examination in cross she admitted that except few accusations and dialogue between the accused and her husband, nothing had taken place. She has been examined in detail by

the defence. Husband of the complainant has been examined at Exh.18 and Babubhai Chavda – PW2 also stated that in fact whatever happened between the accused and his wife could not be noticed as he was in one room of his house. On her shouting he came out of the house and therefore, the witness was declared hostile. Other eye-witnesses examined at PW-3 to PW-9 are not supporting the prosecution case though according to prosecution case some of the witnesses were eye-witnesses. Neighbour of the complainant PW-11 – Naranbhai Mehdabhai examined at Exh.28 stated that he noticed accused causing disturbance near the house of the complainant and therefore, the police had arrested him and except that he had not noticed anything nor he heard uttering words insulting the caste of the complainant neither he noticed accused behaving in indecent manner with the complainant. Therefore, having regard to this evidence of the complainant and other eye-witnesses, learned trial Judge came to the conclusion that there was no evidence to connect the accused with the charges levelled against him. Even the complainant is not supporting the allegations that accused uttered words

insulting caste of the complainant. Nothing is stated by her about indecent insult by the accused against the person of the complainant. PW-12 – PSI recorded complaint of the complainant and registered the crime. PW-13 – Bhasirbhai Fathemabad examined at Exh.31 is concerned PSO who recorded First Information Report in the register of 'B' Division Police Station, Rajkot. Last witness – PW-14 examined at Exh.33- Panchabhai Bhagvanbhai Patel happens to be the Investigating Officer. He recorded the statements of the concerned witnesses, arrested accused, drawn Panchnama and obtained certificate of caste of the complainant. He has been cross – examined by the prosecution. However, evidence of this three witnesses is not useful to the prosecution. In view of above, the learned trial Court came to the conclusion that there was no reliable or credible evidence to connect the accused with the crime by which charges levelled against the accused can be proved and hence, accused came to be acquitted by the learned trial Court.

4. When we have examined evidence at this juncture, we also come to the same conclusion that

even the complainant herself could not support fully the case of the prosecution in respect of allegations she levelled against the accused in her complaint. As discussed above, she further stated that she did not file complaint against the accused but at the instance of other neighbours she filed complaint on the next day. She admitted in her cross examination that ordinary exchange of words between her and the accused took place and nothing happened beyond that. Other witnesses including her husband could not support the prosecution case.

5. This being appeal against acquittal, unless it is found that reasons assigned by the learned trial Court for the acquittal are perverse, palpably wrong, manifestly erroneous or demonstrably unsustainable, no interference is warranted in the order of acquittal. While going through the reasoning with reference to the evidence recorded during trial, even at this juncture we have no hesitation to come to the conclusion that there was no evidence against the accused to connect him the crime. Therefore, the reasons assigned by the learned trial Court for the acquittal cannot be termed as perverse. No

interference, therefore, is required in the judgment and order impugned in this appeal and hence following following order :

ORDER

Leave to appeal refused. Appeal dismissed.

[J.R.Vora, J.]

[M.R.Shah, J.]

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